

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
DEWAIN DAVIS,) CASE NO. 08-22651 JPK
) Chapter 7
Debtor.)

ORDER REGARDING MOTION TO SET ASIDE
DISCHARGE ["MOTION"]

The Motion was filed on December 9, 2008, ostensibly for the purpose of having the court review and potentially approve a reaffirmation agreement between the debtor and Ford Motor Credit Company which it is asserted was executed prior to the entry of discharge, but which was not filed prior to the entry of the debtor's discharge.

The order of discharge entered on November 17, 2008 is a final appealable order, and there is nothing in the Motion which asserts any grounds whatsoever which would allow the court to vacate a final appealable order. The Motion must therefore be denied.

Moreover, the process of the court's review of reaffirmation agreements works this way. If Part D of the reaffirmation agreement package establishes an "undue hardship" within the provisions of 11 U.S.C. § 524(m)(1), then in order to deny the reaffirmation agreement, a hearing which results in denial of the reaffirmation agreement must be "concluded before entry of the debtor's discharge". However, under the miracles of drafting of BAPCPA, if – despite disclosing an undue hardship – the court were to approve the reaffirmation agreement, the hearing does not have to be held prior to the entry of the debtor's discharge.

IT IS ORDERED that the debtor shall file the reaffirmation agreement with Ford Motor Credit Company, and a separate motion for approval of that reaffirmation agreement in accordance with applicable local rules, within 10 days of the date of entry of this order. The court will then set a hearing on the reaffirmation agreement. If the court determines the reaffirmation agreement is approvable, then it is not necessary to deal with the entry of the

debtor's discharge in order to do so. If the court should determine the reaffirmation agreement should be denied, then the court will strike the filing of the reaffirmation agreement as untimely.

Dated at Hammond, Indiana on January 8, 2009.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor
Trustee, US Trustee
Attorney for Creditor